

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF ILLINOIS
E St Louis Division

Hosam Maher Smadi

Plaintiff

v

J. Michaelis, et al

Defendants

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[Case No: 19-cv-217-JPG
[Rel Case No: 18-cv-2149-JPG
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MOTION TO STAY THE COURT'S ORDER (Doc 4) PENDING APPEAL,
OR, IN THE ALTERNATE, TO PROCEED

Comes Now the Plaintiff, Hosam Maher Smadi, and, he Moves This Court To Stay Its Order, Doc 4, and, Screening, and, Assessment of Fees, in this matter pending the disposition of his appeal in Smadi v True SD Ill 18-cv-2149-JPG Doc 13, or, in the alternate, to proceed in this action. In support, Smadi states as follows:

- 1) On February 15, 2019, this Court ordered this matter severed from Smadi v True. Smadi v True Doc 12. This Court then dismissed Smadi v True. Smadi v True Doc 12.
- 2) On February 19, 2019, this Court ordered Smadi to either agree to pay a second filing fee, and, undergo a second screening, or, to have this matter dismissed. Smadi v Michaelis Doc 4.
- 3) On February 21, 2019, Smadi appealed the Court's dismissal of Smadi v True; as part of that appeal, Smadi contests the Court's order of severance, as well as the assessment of a strike. Smadi v True Doc 13.
- 4) In its order of severance, Smadi v True Doc 12, this Court cited to "George", which is, presumably, George v Smith 507 F 3d 605 (7th

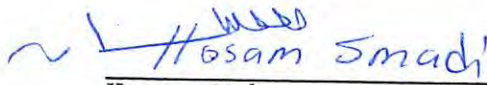
Cir 2007)). The Court appears to be unaware that George was overruled (for then purposes that the Court used it) in 2010 in Turley v Gaetz 625 F 3d 1005), or, otherwise was improperly cited.

- 5) Specifically, Fed.R.Civ.P. 18(a) allows a prisoner litigant to proceed in a single action with "as many claims as it has against an opposing party". George affirmed this. In George, the prisoner litigant proceeded in about 50 claims against 24 different defendants, with none of the claims sharing defendants in common. In dismissing George, the Seventh Circuit found that "multiple claims against a single party" were still permissibly joined in prisoner litigation.
- 6) In this matter, and, Smadi v True, defendant William True is party to all claims but Count 2 (and, if the Seventh Circuit, in reversing, finds that Smadi was only permitted to seek injunctive relief against the Defendants, True will also be party to Count 2, as it will become solely an official capacity claim). Smadi v True Doc 12 p 4. As such, the Court violated Fed.R.Civ.P. 18(a) when it severed the claims, particularly as it found that Count 2 was properly joined to Counts 1, and, 3-6, because of the common issues of law, and, fact, pursuant to Fed.R.Civ.P. 20(a).
- 7) Further, the Seventh Circuit has specifically stated that a District Court cannot assess strikes because a certain action contained both claims subject to dismissal, and, claims not subject to dismissal, in Turley, overruling George. By severing the claims that this Court thought subject to dismissal (and, Smadi notes, that the contention that this Court's similar ruling in White v Sloop SD Ill 17-cv-1059 is erroneous has been ordered briefed by the Seventh Circuit in White v Sloop 7th Cir 18-3720, and, thus implicitly found to be non-frivolous), and, assessing a strike, this Court just invented a way

around what Turley told it not to do, and, pretty clearly erred.

- 8) Because this Court's actions in severing these cases clearly violated Fed.R.Civ.P. 18, and, 20, and, their interpretations in both George, and, Turley, it is improper for this Court to assess Smadi \$1205 in fees -- essentially increasing the fees because Smadi is a pauper, and, this Court believes that he lacks the resources to pursue the action, or, an appeal,
-- for a \$350 legal action.
- 9) If the Court declines to stay this matter while its order of severance is reviewed, Smadi wishes to proceed.

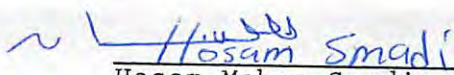
Respectfully Submitted,



Hosam Maher Smadi #39482-177
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PO Box 1000
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CERTIFICATE OF SERVICE

I hereby certify that this Motion to Stay was mailed to the Clerk of the Clerk for posting upon the Electronic Filing System, 1st Class Postage prepaid, this 27th day of February, 2019.



Hosam Maher Smadi

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United States Penitentiary - cmu
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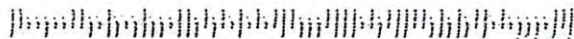


To:

⇔39482-177⇔
Us District Court -
750 Missouri AVE
Clerk's Office, Room 104
E Saint Louis, IL 62201
United States

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